



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 53 OF 2006

1. The State of Maharashtra
Through Anti Corruption Bureau,
Jalna, Dist. Jalna ... Appellant

VERSUS

1. Prakash s/o. Damodhar Deshmukh,
Age : 40 years, Occ. : Service,
R/o. : Peerpimpalgaon, Tq. & Dist. Jalna ... Respondent

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Mr. Rajdeep D. Raut – APP for Appellant, State
Mr. Joydeep Chatterjee – Advocate for sole Respondent

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 28th January, 2025
PRONOUNCED ON : 3rd February, 2025

JUDGMENT :

1. The appellant/State has preferred this appeal challenging the judgment and order dated 19.08.2005 passed by the learned Special Judge at Jalna (*hereinafter referred to as “the learned Trial Court”*) in Special Case [PCA] No.1 of 2000. Under the impugned judgment the present respondent who is original accused – Prakash Damodhar Deshmukh, has been acquitted.

2. Brief facts of the case are as under :

At the relevant time the accused – Prakash Damodhar Deshmukh was serving as a Talathi. In the year 1998 some

residential houses at village Deogaon, Tq. Badnapur got damaged due to heavy rainfall and therefore, the Government declared scheme for paying compensation to those persons who were hit by said natural calamity. In the month of May – 1999, the cheques of compensation amounts were being distributed to the affected persons. The son of complainant by name Abdul Karim also got aforesaid compensation for the loss of his residential room. Therefore, the complainant Abdul Karim, for his son on 25.06.1999 demanded the cheque of compensation from respondent/accused. The accused at the relevant time told that the cheque of Rs.1500/- is ready, but he asked for the bribe of Rs.500/- from the complainant for giving said cheque. Thereafter the respondent/accused asked the complainant to bring bribe amount in his office on 28.06.1999 for getting cheque. The complainant lodged report with A.C.B., Jalna who set up trap and caught the respondent/accused with bribe amount.

3. The learned Trial Court after conducting the trial acquitted the respondent/accused from the offence punishable under Section 7 and 13(2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 (*for short “the P.C. Act”*). Hence, this appeal.

4. Learned A.P.P. for appellant/State submits that, the learned

Trial Court failed to appreciate the evidence on record in proper manner. According to him, the respondent/accused was caught with bribe amount and sanction was also not disputed by him. He pointed out that, evidence of complainant and panch witness is corroborated with each other, but still the learned Trial Court refused to infer that the respondent/accused had accepted the bribe amount. According to him, the learned Trial Court ignored Section 20 of the P.C. Act by refusing to consider the presumption thereunder. In support of his submissions, he relied upon the following judgments :

- (a) Hon'ble Supreme Court in the case of Neeraj Dutta Vs. State (Government of NCT of Delhi) reported in *2019 (3) JT 16*
- (b) Hon'ble Supreme Court in the case of Neeraj Dutta Vs. State (Government of NCT of Delhi) reported in *(2023) 4 SCC 731*

5. On the contrary, learned Counsel for respondent/accused supported the acquittal. He pointed out that, the evidence of complainant and panch witness is silent in respect of demand made by respondent/accused. Moreover, the shop owner in whose shop the respondent/accused allegedly accepted the bribe amount, has clearly stated that it was the complainant who forcibly thrust the bribe amount in the pocket of respondent/accused. Thus, he pointed out that the evidence of complainant as well as

panch witness is not at all convincing. Therefore, the learned Trial Court has rightly acquitted the present respondent/accused. As such, he prayed for dismissal of the appeal.

6. Heard rival submissions. Perused the impugned judgment and documents on record.

7. On going through the evidence of P.W. 1 – Abdul Karim i.e. complainant, it is clearly evident that the respondent/accused had not demanded the bribe amount first and there is nothing in his evidence that, the accused had supported the discussion about work and then demanded the amount from complainant. In the cross-examination it has come on record that, the complainant had uttered single sentence that “accept the amount which I have brought”. Thus, aspect of demand is clearly missing from the said evidence. Further, it reveals from the evidence of complainant that the handing over of bribe amount had taken place within two minutes after his entry in shop at about 03:15 p.m. However, it is surprising to note that, the complainant then gave pre determined signal to raiding party after about one hour i.e. about 04:15 p.m. On the contrary, the panch witness is stating differently and according to him, he had come out from the said furniture shop within ten minutes after the accused had accepted the bribe

amount. The evidence of panch witness is also not convincing because he stood near the door of said furniture shop, but in the cross-examination he stated that he had also entered in the said furniture shop. Further, from the evidence of this witness it is also not evident that, the respondent/accused had demanded the bribe amount.

8. On this background, the evidence of shop owner P.W. 2 – Madhukar is also utmost important. Though this witness did not support the case of prosecution, but he has specifically stated that, there was no conversation between complainant and accused in respect of cheque amount of compensation and the accused demanded the bribe amount. According to him, the complainant had in fact forcibly thrusting tainted money in the pocket of shirt of the accused. Further, there is no evidence that the fingers of the members of raiding party were tested after the bribe amount was recovered. The most surprising part is that, the Investing Officer – Mr. Shriniwas Tandale (P.W. – 5) has stated that, the Tahsildar had issued instructions to village Talathi to stop distribution of the cheques of compensation for the period from 21.06.1999 to 08.07.1999. Therefore, the entire story of the complainant about demand of bribe by the respondent/accused is doubtful and

appears to be concocted. Thus, there is no satisfactory evidence on the point of demand of bribe amount and the acceptance of the same on the part of accused. Thus, the entire process of trap dated 28.06.1999 appears highly unbelievable and doubtful.

9. Learned A.P.P. for appellant/State heavily relied upon on the judgment of Hon'ble Supreme Court in the case of Neeraj Dutta (*supra*), wherein it is observed that *"if the direct proof of demand is not available but evidence of panch witness is reliable to the extent of acceptance of money then by raising presumption under Section 20 of Act is permissible to draw inference to prove of the demand"*. Further, it is also held that *"the aspect of demand in absence of evidence of complainant, can be proved on the circumstantial evidence adduced by the prosecution"*. However, these observations are not at all applicable in the present case, since the circumstantial evidence is also not convincing and the oral evidence is full of discrepancies. Thus, considering all these aspects the learned Trial Court had rightly acquitted the respondent/accused and therefore, no interference is required in the impugned judgment. Accordingly, the appeal stands dismissed.

[SANDIPKUMAR C. MORE]
JUDGE